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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEXON AMERICA INC., a Delaware
corporation,

Plaintiff,

v.

PARDEEP KUMAR a/k/a "Alex,"
"Zain," "Alex Licena," "Alex
Sarimento," "Alex Awesome,"
"lilkidalex," and "gmanpopinjay," an
individual, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. LA-CV-11-6991 ODW
(PJWx)

**NOTICE OF *EX PARTE*
APPLICATION AND *EX PARTE*
APPLICATION OF NEXON
AMERICA INC. FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY
RE: SERVICE AND IDENTITY OF
DOE DEFENDANTS;**

**MEMORANDUM OF POINTS AND
AUTHORITIES**

[DECLARATION OF MARC E.
MAYER, [PROPOSED] *EX PARTE*
ORDER filed concurrently herewith]

EX PARTE APPLICATION

PLEASE TAKE NOTICE that Plaintiff Nexon America Inc. (“Nexon”) hereby applies *ex parte* pursuant to Federal Rule of Civil Procedure 26(d) and Local Rule 7-19 for leave to take certain specified, expedited, pre-service discovery for the limited purpose of learning the true identities, whereabouts, and legal status of Does 1 through 10 (the “Doe Defendants”), including the individuals known as “emilyx3,” Ashley,” “candyman,” “BABYBE3ZY,” and “Awesome,” in order to properly add them as named defendants in this action and to serve them with process.

Good cause exists for this Application: (1) despite reasonable and diligent efforts, Nexon has been unable to collect the information necessary to identify and serve the Complaint on the Doe Defendants, (2) such relief is necessary in revealing the true identities of the Doe Defendants, and (3) this litigation cannot proceed without the limited discovery requested in this Application. The discovery sought by this Application is extremely limited, and will not unfairly prejudice Defendants.

The facts surrounding this Application are as follows: Nexon is a developer and publisher of computer games, including the computer game “MapleStory.” Defendants, individually or collectively, developed, own and operate a network of unauthorized, emulated (“private”) MapleStory servers and affiliated websites (the “UMaple Network”). The websites include www.aurasea.net, www.bankaistory.net, and www.pockyms.net (“UMaple Websites”). The UMaple Network enables users to access and play MapleStory without Nexon’s authorization and without being connected to Nexon’s MapleStory server. In creating and operating the UMaple Network, each of the Defendants (including the Doe Defendants) has unlawfully copied, distributed, and encouraged others to copy and distribute, Nexon’s copyrighted software. Defendants also have trafficked in

1 devices designed to circumvent Nexon's access control technologies. The UMaple
2 Network causes serious and irreparable harm to Nexon and its products.

3 The Doe Defendants know that their conduct is unlawful. Accordingly, for
4 the express purpose of avoiding service by Nexon, they have hidden their identities
5 behind various aliases and false names. In addition to the named Defendant (who
6 has defaulted), among the core operators of the UMaple Network are individuals
7 known as "emilyx3," "Ashley," "candyman," "BABYBE3ZY," and "Awesome."
8 Additionally, operators of the UMaple Network have created websites, Facebook
9 pages, Twitter accounts, and YouTube accounts under the name "UMaple."
10 Nexon has reason to believe that the person or persons who own these "UMaple"
11 accounts are among the Doe Defendants or otherwise are affiliated with the Doe
12 Defendants.

13 The Doe Defendants' wrongful acts constitute direct copyright infringement,
14 inducement to infringe copyrights, contributory copyright infringement, vicarious
15 copyright infringement, violation of Section 1201 of the Digital Millennium
16 Copyright Act, breach of contract, and intentional interference with contractual
17 relations. The Doe Defendants' illegal activities cause significant and irreparable
18 harm to Nexon. Yet without the relief requested in the Application, Nexon will be
19 unable to vindicate its rights.

20 To learn the true identities of the Doe Defendants and their relationship to
21 the infringing activities, Nexon, by this Application, seeks to serve a subpoena for
22 the production of documents and depositions, if necessary, pursuant to Federal
23 Rule of Civil Procedure 45 on the following entities:

24 1. **Yahoo!, Inc.**, a company which provides e-mail services for Doe
25 Defendant "Emilyx3" (wms_emilyx3@yahoo.com);

26 2. **Microsoft Corp.**, a company which provides e-mail services for
27 "lilkidalex," who is believed to be either Defendant Pardeep Kumar or someone
28 affiliated with Mr. Kumar (lilkidalex@live.com);

3. **YouTube, LLC**, a company through which a number of individuals and entities, including BABYBE3ZY and “Umaple” post instructional videos relating to use of the UMaple Network;

4. **Facebook, Inc.**, a company through which “UMaple” (the entity at issue in this lawsuit) operates a web page and solicits new members.

5. **Twitter Inc.**, a company through which “UMaple” possesses an account and posts updates to its members.

6. **Cloudflare, Inc.**, a company that provides back-end services for the UMaple Websites.

7. **Verizon Communications Inc.**, an Internet Service Provider that provided service to Defendant Pardeep Kumar.

8. Should these efforts fail, any other third parties that are aware of the identities of the Doe Defendants that may be uncovered by Nexon’s limited discovery from the entities described above.

Good cause also exists for allowing Nexon to take the requested discovery on an expedited basis. First, without expedited discovery, crucial evidence is likely to be destroyed. Second, Nexon has taken reasonable and diligent steps to locate the Doe Defendants. Third, expedited discovery will substantially move this case forward, without prejudice to any responding party.

Nexon could not give notice of this Application to the Doe Defendants because, as noted above and in the accompanying declaration of Marc E. Mayer, despite diligent efforts, Nexon has been unable to ascertain the true identities of the Doe Defendants, who conduct their activities anonymously or under false names. Indeed, the very purpose of this Application is to learn those identities. It follows that Nexon was unable to give notice to the Doe Defendants before filing this Application as required by Local Rule 7-19.1. However, Nexon has given notice of this Application using the only known means of contact associated with the Doe Defendants: wms_emilyx3@yahoo.com, lilkidalex@live.com, and

1 babybe3zy@gmail.com. Nexon has reason to believe that certain of the Doe
2 Defendants receive and regularly review e-mail sent to these addresses. Nexon
3 also has given notice of this Application to Defendant Kumar at his home address.

4 This Application is based upon this *Ex Parte* Application, the attached
5 Memorandum of Points and Authorities, the attached supporting Declaration of
6 Marc E. Mayer, the exhibits attached thereto, the Complaint in this action filed on
7 August 23, 2011, and such other and further oral or documentary evidence and
8 legal memoranda as may be presented at or before any hearing on this application.
9

10 DATED: September 26, 2011

KARIN G. PAGNANELLI
MARC E. MAYER
MITCHELL SILBERBERG & KNUPP LLP

13 By: /s/ Marc E. Mayer

14 Marc E. Mayer
15 Attorneys for Plaintiff,
16 Nexon America Inc.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this *Ex Parte* Application, Nexon America Inc. (“Nexon”) seeks leave to take certain limited early discovery for the sole purpose of learning the true identities of Does 1 through 10, including the individuals known as “emilyx3,” “Ashley,” “candyman,” “BABYBE3ZY,” and “Awesome,” (the “Doe Defendants”), in order to properly add them as named defendants in this action and serve them with process.

This is a copyright infringement and breach of contract lawsuit arising from Defendants’ creation and operation of a network of unauthorized, emulated (“private”) MapleStory servers and affiliated websites (the “UMaple Network”). The websites include www.aurasea.net, www.bankaistory.net, and www.pockyms.net (“UMaple Websites”). Among other things, the servers and websites associated with the UMaple Network, including the Doe Defendants’ “AuraSEA,” “BankaiStory,” and “PockyMS” enable members of the public to access and play MapleStory without the authorization of Nexon. The UMaple Network causes immense harm to Nexon and its products.

As set forth in the Complaint, in furtherance of the operation of the UMaple Network, Defendants (including the Doe Defendants) copied the MapleStory game software (known as the “client”), created derivative works of files contained within the MapleStory game, uploaded copies of the game to the Internet, posted links to those infringing files, encouraged members of the public to download those files, and offered support and instruction to users copying and downloading those infringing files. Complaint, ¶¶ 32-35; 41-43 (a copy of the Complaint is attached as Exhibit 1 to the Declaration of Marc E. Mayer). Additionally, in order to allow users to access the UMaple Servers, Defendants trafficked in technology designed to circumvent or bypass strict access control measures contained within the MapleStory client. Complaint, ¶¶ 36-40; 82-85.

1 There can be little dispute that the conduct engaged in by Defendants
 2 constitutes direct copyright infringement and inducement to infringe copyrights.
 3 See, e.g., A&M Records Inc. v. Napster Inc., 239 F.3d 1004, 1013-14 (9th Cir.
 4 2009); Metro-Goldwyn-Mayer Studios Inc., v. Grokster, Ltd., 545 U.S. 913, 919
 5 (2005). Additionally, Defendants' conduct constitutes a violation of the anti-
 6 circumvention provisions of the DMCA. See MDY Indus. v. Blizzard Entm't,
 7 Inc., 629 F.3d 928, 942 (9th Cir. 2010). Finally, Defendants' conduct violates (and
 8 induces a breach of) the terms of service and end-user license agreements between
 9 Nexon and its customers. See Davidson & Assoc. v. Jung, 422 F.3d 630 (8th Cir.
 10 2005).

11 Courts have recognized that where tortious conduct occurs through on-line
 12 activity, "[s]ervice of process can pose a special dilemma for plaintiffs" because
 13 tortfeasors are able "to commit certain tortious acts, such as . . . copyright
 14 infringement" virtually "pseudonymously or anonymously" by providing
 15 "fictitious or incomplete identifying information." Columbia Ins. Co. v.
 16 Seescandy.com, 185 F.R.D. 573, 577-78 (N.D. Cal. 1999). Under such
 17 circumstances, pre-service discovery is appropriate.

18 To learn the identities and whereabouts of the Doe Defendants and their
 19 relationship to the infringing activities, Nexon seeks certain limited discovery from
 20 several entities that are likely to possess information concerning the identity and
 21 location of the Doe Defendants: (1) **Yahoo!, Inc.**, a company which provides e-
 22 mail services for Doe Defendant "Emilyx3" (wms_emilyx3@yahoo.com);
 23 (2) **Microsoft Corp.**, a company which provides e-mail services for "lilkidalex,"
 24 who is believed to be either Defendant Pardeep Kumar or someone affiliated with
 25 Mr. Kumar (lilkidalex@live.com); (3) **YouTube, LLC**, a company through which
 26 Doe Defendant "BABYBE3ZY" and many other suspected operators of the
 27 UMaple Network post instructional videos relating to use of the UMaple Network;
 28 (4) **Facebook, Inc.**, a company through which "UMaple" (the entity at issue in this

lawsuit) operates a web page and solicits new members; (5) **Twitter Inc.**, a company through which “UMaple” possesses an account and posts updates to its members; (6) **Cloudflare, Inc.**, a company that provides back-end services for the UMaple Websites; and (7) **Verizon Communications Inc.**, an Internet Service Provider that provided service to Defendant Pardeep Kumar.

By virtue of their business and financial relationships with the Doe Defendants or their predecessors, each of these third parties likely possesses information concerning (or relevant to discovering) the Doe Defendants’ true identities. Accordingly, Nexon seeks an order from the Court granting leave to serve Rule 45 subpoenas for the production of documents and deposition, if necessary, on these persons and entities immediately.

II. STATEMENT OF THE CASE

Nexon and its Products. Nexon is a computer game developer and publisher, engaged in the business of developing, financing, producing, marketing, and distributing popular high-quality software game products for personal computers (PCs) including the computer game titled MapleStory. Nexon is the owner of copyrights in numerous computer software entertainment products, including the computer game “MapleStory.” Complaint, ¶10. Nexon’s copyright in MapleStory covers nearly all aspects of the game as distributed, including the underlying code and the audiovisual elements of the game. Id.

MapleStory. MapleStory is an online, multiplayer computer game in which thousands of people simultaneously travel throughout the virtual, computer-generated “Maple World,” defeating foes, completing quests, solving puzzles, and developing their characters’ skills and abilities. Complaint, ¶ 16.

Two interrelated components are required to play MapleStory. First, users must download and install on their personal computers a software product known as the MapleStory “client.” Complaint, ¶ 18-19. Second, once the MapleStory client has been installed, users must connect to Nexon’s MapleStory Internet server

1 via an online connection. Nexon's MapleStory server, among other things,
 2 provides players with access to the copyrighted content of the MapleStory gaming
 3 environment, connects MapleStory players with each other, and generates the
 4 living, evolving MapleStory game world in which users interact with each other
 5 and with the game. Id. In its normal course of operation, MapleStory cannot be
 6 played without both the MapleStory client and an active online connection to
 7 Nexon's MapleStory server. Id.

8 Nexon's client contains a number of security measures that prevent the game
 9 from being connected to and/or played on servers other than Nexon's MapleStory
 10 server. Id., ¶¶ 28-31. Additionally, any person wishing to play MapleStory must
 11 create an account with Nexon and consent to Nexon's "Terms of Use." Id., ¶ 20-
 12 27.

13 **The UMaple Network.** Defendants, along with Defendant Pardeep Kumar,
 14 are the creators, owners and operators of a for-profit venture known as "UMaple."
 15 Complaint, ¶3. Through this venture, Defendants enable members of the public to
 16 access and play MapleStory without the authorization of Nexon and without being
 17 connected to Nexon's MapleStory server. Id.; Complaint, ¶ 32. Specifically,
 18 Defendants developed, own and operate a series of websites and servers known as
 19 the "UMaple Network." The UMaple Network is comprised of three "UMaple
 20 Servers" ("AuraSEA," "BankaiStory," and "PockyMS") and three UMaple
 21 Websites (www.aurasea.net, www.bankaistory.net, and www.pockyms.net) that
 22 provide users with information, products and other services necessary to access
 23 and use the UMaple Servers. Complaint, ¶33. The UMaple Servers are designed
 24 to emulate Nexon's MapleStory server and enable large-scale multi-player online
 25 play of MapleStory without the authorization of Nexon.

26 **Defendants' Unlawful Conduct.** As set forth in the Complaint, in order to
 27 create and operate the UMaple Network, Defendants, including the Doe
 28 Defendants, engaged in the following activities:

1 • They copied and modified copyrighted MapleStory files, uploaded
2 those files to the Internet, posted links to those files (and updated those links), and
3 instructed and encouraged members of the public to download both those files and
4 pirated copies of the entire MapleStory game “client.” This conduct constitutes
5 copyright infringement, contributory infringement, and inducement to infringe
6 copyrights. Complaint, ¶¶ 32-35; 41-44.

7 • They created and offered to the public computer files designed to
8 circumvent and bypass access controls put into place by Nexon. Those access
9 controls were intended specifically to thwart activities such as Defendants’. This
10 conduct violates Section 1201 of the DMCA. Complaint, ¶¶ 36-40; 82-86.

11 • They breached their terms of use with Nexon (which specifically
12 prohibit the creation and use of emulated servers). Complaint, ¶¶ 45, 96. And,
13 with knowledge that others had entered into the same terms of use, Defendants
14 encouraged those people to engage in conduct that plainly violated that contract.
15 Complaint, ¶¶ 98, 100.

16 Defendants’ conduct plainly is willful: the very purpose of the UMaple
17 Servers and the UMaple Websites is to facilitate copyright infringement and to
18 breach and induce breach of terms of service and contracts with Nexon. Indeed,
19 each of the Doe Defendants has posted messages on the UMaple Websites
20 discussing Nexon and the possibility of a lawsuit filed by Nexon to shut down the
21 UMaple Network. They are fully aware that their conduct is unlawful and have
22 taken pains to hide their identities from Nexon.

23 The Doe Defendants are those individuals or entities who have been self-
24 identified as administrators and moderators on forums and/or involved in coding
25 the UMaple Servers and/or providing assistance to UMaple users. Nexon has
26 undertaken an extensive investigation into the identities of these individuals.
27 Based on that investigation, Nexon identified Defendant Kumar as one of the chief
28 operators of the UMaple Network. Kumar has been served with process, but has

not appeared in this action, and his default has been entered by the clerk. Despite diligent efforts (*infra* Section III), Nexon has been unable to locate and/or identify the true identities of the Doe Defendants prior to taking discovery. However, Nexon has identified a number of websites and other services used by the Doe Defendants, and expects that the owners of these services (including YouTube, Facebook, Microsoft, Cloudflare, and Verizon) will have information concerning the identity of these individuals.

III. NEXON SHOULD BE GRANTED LEAVE TO TAKE IMMEDIATE DISCOVERY TO LEARN DEFENDANTS' IDENTITIES

District courts have broad discretion in scheduling discovery, including the discretion to order expedited discovery. Hallet v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). As a threshold matter, courts routinely allow pre-service discovery to identify Doe defendants. See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) (“where the identity of [the] alleged defendant[] [is] not [] known prior to the filing of a complaint[,] the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds”); see also Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (holding that district court erred in dismissing Doe defendant “simply because [plaintiff] was not aware of Doe’s identity at the time he filed his complaint”); Valentin v. Dinkins, 121 F.3d 72, 75-76 (2d Cir. 1997); Munz v. Parr, 758 F.2d 1254, 1257 (8th Cir. 1985); Maclin v. Paulson, 627 F.2d 83, 87 (7th Cir. 1980). Such discovery is especially appropriate where individuals “pseudonymously or anonymously” commit tortious acts over the Internet. Seescandy.com, 185 F.R.D. at 578-81 (authorizing plaintiff to conduct pre-service discovery to ascertain the identities of Doe defendants accused of committing trademark infringement over the Internet).

Although discovery ordinarily ensues after a defendant has been served with process and the court has held a Rule 26(f) conference (see Fed. R. Civ. P. 26(d)), the court may authorize expedited discovery for “good cause.” Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002); see Rose v. Abraham, No. 1:08-CV-00606-AWI-SMS, 2008 WL 3540542 at *2 (E.D. Cal. Aug. 13, 2008). Good cause exists “where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” Semitool, 208 F.R.D. at 276. Here, good cause exists for expedited discovery. First, expedited discovery is necessary to identify the Doe Defendants, to avoid potential spoliation of evidence, and stop the irreparable harm of further infringement.¹ Second, expedited discovery will promote the efficient administration of justice because it will enable Nexon to properly name all Defendants and for this action to proceed efficiently toward resolution. Third, the requested expedited discovery will not prejudice any responding party.

First, Nexon has attempted to determine the Doe Defendants’ true identities and whereabouts by tracking down information related to the UMaple Websites and the Doe Defendants’ aliases. Declaration of Marc E. Mayer (“Mayer Decl.”) ¶¶ 2, 3, 7, 8. Through these efforts, Nexon learned that entities including Yahoo!, Cloudflare, YouTube, Facebook, Microsoft, Verizon, and Twitter are likely to have information concerning the identities of the Doe Defendants. Mayer Decl. ¶ 8.

¹ “Service of process can pose a special dilemma for plaintiffs in cases like this in which the tortious activity occurred entirely on-line. The dilemma arises because, as here, the defendant may have used a fictitious name and address in the commission of the tortious acts. ... With the rise of the Internet has come the ability to commit certain tortious acts, such as defamation, copyright infringement, and trademark infringement, entirely on-line. The tortfeasor can act pseudonymously or anonymously and may give fictitious or incomplete identifying information. Parties who have been injured by these acts are likely to find themselves chasing the tortfeasor from Internet Service Provider (ISP) to ISP, with little or no hope of actually discovering the identity of the tortfeasor.” Seescandy.com, 185 F.R.D. at 577-78. In these circumstances, a plaintiff has no choice but to sue the Internet-infringer as a “doe” defendant and then seek to learn the identity of the infringer through the discovery process.

1 *Second*, expedited discovery is necessary because there is a tangible risk that
 2 the information Nexon seeks will be destroyed. ISPs typically retain user activity
 3 logs containing the information sought for only a limited period of time –
 4 sometimes for as little as a few weeks – before erasing the data. Mayer Decl. ¶ 7.
 5 If such information is destroyed, Nexon will lose the opportunity to identify the
 6 Doe Defendants who are directly involved with the UMaple Network, including
 7 the UMaple Websites. Accordingly, if Nexon is to pursue its lawsuit to protect its
 8 copyrighted works, Nexon must have swift access to the ISPs’ information. Where
 9 “physical evidence may be consumed or destroyed with the passage of time,
 10 thereby disadvantaging one or more parties to the litigation,” good cause for
 11 expedited discovery exists. Qwest Commc’ns Int’l Inc. v. Worldquest Networks,
 12 Inc., 213 F.R.D. 418, 419 (D. Colo. 2003); see Monsanto Co. v. Woods,
 13 250 F.R.D. 411, 413 (E.D. Mo. 2008) (granting request for expedited discovery
 14 because “as time passes, the likelihood of discovering evidence relevant to their
 15 claims will decrease”); Pod-Ners, LLC v. N. Feed & Bean of Lucerne LLC,
 16 204 F.R.D. 675, 676 (D. Colo. 2002) (allowing plaintiff expedited discovery to
 17 inspect beans in defendant’s possession because the beans might no longer be
 18 available for inspection if discovery proceeded in the normal course).

19 *Finally*, expedited discovery is necessary where, as here, the complaint
 20 alleges claims of infringement. Qwest, 213 F.R.D. at 419 (“The good cause
 21 standard may be satisfied . . . where the moving party has asserted claims of
 22 infringement and unfair competition.”).² Expedited discovery is necessary because
 23

24 ² Nexon’s claims for complaint copyright infringement, inducement to infringe
 25 copyrights, contributory copyright infringement, vicarious copyright infringement,
 26 violation of Digital Millennium Copyright Act, breach of contract and intentional
 interference with contractual relations against the Doe Defendants will withstand a
 motion to dismiss.

27 A plaintiff states a claim for copyright infringement by establishing (i) ownership
 28 of a copyright and (ii) copying. Shaw v. Lindheim, 919 F.2d 1353, 1356 (9th Cir.
 1990). Contributory copyright infringement occurs when a defendant “(1) has

(...continued)

infringement claims involve irreparable harm to the plaintiffs. Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1121 (9th Cir. 1999) (“Federal copyright law presumes irreparable harm from the infringement of a copyright.”); see also 4 M. & D. Nimmer, Nimmer On Copyright § 14.06[A], at 14-125 (2007); Taylor Corp. v. Four Seasons Greetings, LLC, 315 F.3d 1039, 1041-42 (8th Cir. 2003); ABKCO Music, Inc. v. Stellar Records, Inc., 96 F.3d 60, 66 (2d Cir. 1996). Here, it is necessary to identify and serve the Doe Defendants as quickly as possible so as to ensure they do not continue to infringe the copyrights of Nexon. In sum, expedited discovery is necessary to identify Defendants, to avoid potential spoliation of evidence, and stop the irreparable harm of further infringement.

IV. EXPEDITED DISCOVERY WILL PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

In addition to being necessary, Nexon’s proposed expedited discovery is critical to ensure that those who operate and profit from the unlawful infringement in this case can be brought before the Court as soon as possible. Information from the third parties sought to be subpoenaed will likely identify the individuals or entities operating the UMaple Network, each of whom should timely be made Defendants in this case. See Knapp v. Americredit Fin. Servs., Inc., 204 F.R.D. 306, 308-09 (S.D. W.Va. 2001) (granting, in a case with Doe defendants and a named defendant, expedited discovery because it “further[s] the goal of assuring that the necessary parties are joined and participating in this action at the earliest possible date”); Semitool, 208 F.R.D. at 277 (reasoning that expedited discovery is justified where it will “substantially contribute to moving th[e] case forward”).

(...continued)
knowledge of another’s infringement and (2) either (a) materially contributes to or (b) induces that infringement.” Perfect 10, Inc. v. Visa Int’l Serv. Ass’n, 494 F.3d 788, 795 (9th Cir. 2007). Here, Nexon has more than adequately pled its claims against the Doe Defendants.

**V. EXPEDITED DISCOVERY WILL NOT PREJUDICE ANY
RESPONDING PARTY**

This Application seeks leave to subpoena a limited number of entities, see Mayer Decl. ¶¶ 7-8 & Ex. 2 (collectively, the “Subpoenaed Parties”) for the limited purpose of learning the Doe Defendants’ true identities, whereabouts, and relationship to the infringing U Maple Network. These third-party persons and entities are those most likely to have information that will assist in identifying the Doe Defendants so that service can be effected.

Concurrent with the filing of this Application, Nexon is notifying the Subpoenaed Parties of the Application’s filing and requesting that they each preserve records that may be responsive to Nexon’s discovery. Mayer Decl. ¶ 8, & Ex. 2. If the Court grants this Application, Nexon will promptly serve subpoenas requesting information identifying those affiliated with the UMaple Network. The Subpoenaed Parties will be able to notify the Doe Defendants that Nexon is seeking their identities and all parties will have the opportunity to raise objections by filing a motion to quash in this Court before the return date of the subpoena. The Subpoenaed Parties will be asked for information that they would have eventually provided in the normal course of discovery, so they take on no extra burden by responding to expedited discovery. Thus, the Doe Defendants will not be prejudiced if this Application is granted.

In addition, Nexon’s narrowly tailored discovery does not exceed the minimum information required to advance this lawsuit and, thus, will not prejudice the Doe Defendants or Subpoenaed Parties. See Capitol Records, Inc. v. Doe, No. 07-cv-1570-JM (POR), 2007 WL 2429830, at *1 (S.D. Cal. Aug. 24, 2007) (motion for immediate discovery granted because of narrow tailoring of requests, allegations of copyright infringement, danger of lost evidence, and need for the discovery to move the case forward). Here, Nexon only seeks information

1 necessary to identify the Doe Defendants, their whereabouts, and their relationship
2 to the UMaple Network, including the UMaple Websites.

3
4 **VI. CONCLUSION**

5 For the foregoing reasons, Nexon's *Ex Parte* Application for leave to take
6 expedited pre-service discovery should be granted.

7
8 DATED: September 26, 2011

MITCHELL SILBERBERG & KNUPP LLP
MARC E. MAYER
KARIN G. PAGNANELLI

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10
11 By: /s/ Marc E. Mayer

12 Marc E. Mayer
13 Attorneys for Plaintiff,
14 Nexon America Inc.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 26, 2011, I served a copy of the foregoing document(s) **NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION OF NEXON AMERICA INC. FOR LEAVE TO TAKE IMMEDIATE DISCOVERY RE: SERVICE AND IDENTITY OF DOE DEFENDANTS; MEMORANDUM OF POINTS AND AUTHORITIES** described as on the interested parties in this action at their last known address as set forth below by taking the action described below:

Defendant

Pardeep Kumar
9515 115th Street
South Richmond Hill, NY 11419

☒ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on September 26, 2011, at Los Angeles, California.


Jennifer Gaines